IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/10/2004

CORAM

THE HONOURABLE MR.JUSTICE A.K.RAJAN

Writ Petition No.5708 of 1997

1.C.Ranganathan
2.Minor Appu
3.Minor Mahesh
(Minors rep. by their grand-father
Mr.C.Ranganathan 1st petitioner) ... Petitioners

-Vs-

1. Government of Tamil Nadu
rep. by its Secretary to Government
Public Health and Family Planning
Department, Fort St. George
Chennai 600 009.

2.The Resident Medical Officer
Chingleput Medical College
Hospital, Chengleput

3.Dr.Sivankumar
Civil Asst. Surgeon
Chingleput Medical College
Chingleput

4.Mrs.Rajam ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of
India, praying to issue a writ of Mandamus, to direct the respondents to pay the petitioners a sum of Rs.3,00,000/- or any other sum that may be fixed and determined by this Court by way of Compensation to the petitioners consequent upon the death of Mrs.Sumathi on 24.07.1996 caused by the negligence and carelessness of the respondents 2,3 and 4.

For Petitioners : Mr.P.M.Subramanyam

For Respondents : Mr.R.Laksminaryanan
Government Advocate

:ORDER

This writ petition has been filed for the issuance of a writ of Mandamus, to direct the respondents to pay the petitioners a sum of Rs.3,00,000/- or any other sum that may be fixed and determined by this Court by way of Compensation to the petitioners consequent upon the death of Mrs.Sumathi on 24.07.1996 caused by the negligence and carelessness of the respondents 2,3 and 4.

2. The petitioners are father and minor children of one Sumathi. Sumathi fell in love with one Chandrasekar and married him. She gave birth to a son. The said Chandrasekar ill-treated her and she was sent to her matrimonial residence. Thereafter she gave birth to another son. Village Panchayat was also held; in that they were separated. Thereafter, the daughter was living with the father. While so, on 16.07.1996, a mid-wife employed in the Chengleput Medical College Hospital, Chengleput who is also a relative of Chandrasekar made Sumathi to undergo family planning operation immediately after the second delivery. On 22.07.1996, the said Sumathi was taken to the Chengleput Medical College Hospital and a family planning operation was performed on her. Though she was physically and mentally fit before the operation, she developed acute stomach pain after the operation. On the very same day, i.e., on 23.07.1996, she was once again operated upon. Next day on 24.07.1996, when the father went to see the daughter, he had seen the daughter lying in the corridor of the Hospital, bleeding through the nostrils, mouth and ears. Within minutes thereafter, the daughter died. Thereafter, the body was buried without even conducting post mortem. The father of the girl gave a police complaint on 31.06.1996 to the Chingleput Town Police Station which was registered as Crime No.531 of 1996. He also gave a petition to the Tahsildar, Chengleput to exhume the body for the purpose of conducting post mortem. Accordingly, the body was exhumed on 02.08.1996 and post mortem was conducted by a team of Doctors. Post mortem report does not reveal the cause of death. Certain parts of the Corpse was sent for chemical analysis, but the chemical analysis report was not furnished to the father of the girl. Therefore, he made representation from 26.08.1996 onwards for furnishing the chemical analysis report. But that was not furnished to him. Under those circumstances, according to the petitioner, the girl died due to negligence on the part of the hospital authorities. The children have lost their mother which is only due to the negligent manner in which the operation was performed. Therefore, the Government is liable to pay compensation for the loss of life of Sumathi.

3. Even though notices were served on all the respondents as early as 1997, so far no counter has been filed. The learned Government Advocate on the basis of the letter sent by the Dean submitted that all the necessary care was taken, but inspite of that the girl died; But this was not due to negligence. In the affidavit, it is stated that when the father of the girl went to the hospital at about 6.00 a.m, he found the girl lying on the corridor bleeding through nostril, mouth and ears. In a decision reported in N.Murugan and three others Vs. The Government of Tamilnadu etc.,(1997 WLR 138), this Court in a similar circumstance, where a person died after the operation and counter was not filed even after seven years, has expressed grief for not filing the counter. The observation made in that decision applies to the facts of the present case.

4. It has not been contraverted by filing any counter. Merely stating that all necessary treatment was given to the girl is not sufficient to reject this specific averment in the affidavit. It is also stated in the affidavit that while the father was by the side of the girl, the girl lost her breath at 6.45 a.m in the corridor itself shows that the girl was lying bleeding for hours together within the hospital premises where a number of Government Doctors also were on duty. It is very sad to see that none of the doctors or any other staff had taken any steps to give necessary treatment when she, an impatient, was struggling for her life, that too inside the hospital run by the Government in the Headquarters of the Town which is very near to Chennai. The principle of res ipsa loquitur is applicable to the present case. The facts speaks for itself. It does not require any other evidence to prove the fact in issue. The very fact that the girl is of 26 years after the conduct of family planning operation in the hospital, was suffering for her life in the hospital was not given proper treatment was not even attended to, would go a long way to prove the negligence on the part of the authorities who have the duty and responsibility to treat the patients come for treatment. The doctors and the staff are paid by the Government only for that. Therefore, it is a clear case of negligence on the part of the hospital authorities. Thus the negligence is proved.

5. The fact that the Government hospitals treat the patients freely does not disentitle the patients to get compensation for loss due to the negligent acts of the authorities. The Government is vicariously liable to compensate the loss under the circumstances. In this case, since the death occurred due to the negligence of the hospital authorities, the Government is liable to pay compensation to the dependents of the deceased Sumathi. This Court in number of cases, where death was caused due to the negligence on the

part of the Government authorities awarded compensation of Rs.3 lakhs. Therefore, in this case also a compensation of Rs.3 lakhs is awarded to the petitioners.

6. Out of this Rs.3 lakhs, Rs.1.25 lakhs shall be deposited each in the names of two minor children in Indian Bank, chengleput till they attain majority. The interest alone shall be paid to the first petitioner herein for the maintenance of the minor children. The balance amount of Rs.50,000/- shall be paid to the first petitioner, to meet expenditure for the maintenance of the minor children for the past seven years.

7. In the result, the writ petition is allowed as above. No costs.

Index:yes
Internet:yes

To
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